

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of the [REDACTED] located in Dane County and at all times relevant to this hearing has had a court appointed guardian to manage her finances.
2. On April 6, 2016, a new guardian was appointed on behalf of the petitioner due to the prior guardian failing to perform their duties, including failing to reapply for Medicaid on behalf of the petitioner and failing to pay bills on behalf of the petitioner, most notably, failing to pay the costs associated with petitioner's residency at [REDACTED].
3. As a result of the prior guardian's inaction, income and funds available in the petitioner's bank account were allowed to accumulate.
4. Upon being appointed, the petitioner's new guardian began the arduous process of straightening out the petitioner's finances, including investigating sources of income and determining outstanding debts.
5. In May 2016 the petitioner's guardian filed an Institutional MA application and requested that eligibility be retroactive to February 2016.
6. On July 1, 2016, the agency determined that the petitioner was eligible for Institutional MA in February, March and June 2016 but that her assets were over the eligibility limit in April and May 2016.

DISCUSSION

MA certification is available *if all conditions of eligibility-- including meeting the asset test-- are satisfied*. Wis Admin. Code § DHS 103.08(1). Certification pursuant to an application can be made retroactive for up to three months. In this case, the application was filed in May, 2016, so MA certification was possible going back to February 2016, pursuant to that application. For a single person seeking Institutional MA coverage, **the asset limit is \$2,000**. Wis. Stat. §49.47(4)(b). See also *MA Eligibility Handbook (MEH)*, Table 39.4 (EBD), viewable online at <http://www.emhandbooks.wi.gov/meh-ebd/>.

As a result of the petitioner's former guardian's failure to properly manage petitioner's finances, her debt to her nursing home went unpaid and income was allowed to accumulate over the statutory asset limit. The statute is absolute in its requirement that a person with more than \$2,000 in countable assets be found ineligible for Institutional MA:

(b) Eligibility exists if the applicant's property does not exceed the following:

3g. Liquid assets for a single person limited to:

...

e. After December 31, 1988, \$2,000.

Wis. Stat. §49.47(4)(b). See also *MEH*, Table 39.4 (EBD). Unfortunately, the statute does not allow for outstanding debts to be deducted from assets, nor does it provide any exceptions for unusual situations. An asset is considered available if it can be sold or disposed of by the owner or the owner's representative, the owner has legal title to it, and the owner has the legal ability to make the money from the asset available for support and maintenance. *MEH*, 16.2, "Asset Availability."

The petitioner was ineligible for MA in April and May 2016 because her bank account, after subtracting the income received in the month, remained over the \$2,000 asset limit. *MEH*, 16.1, online at <http://www.emhandbooks.wi.gov/meh-ebd/>. Federal and state rules allow the disregarding (as an asset) of income received in a given month, as long as the income is expended in 30 days. 42 CFR §436.845 & §436.601(d)(2). However, the petitioner's nursing home liability cannot be subtracted from the asset, because the statute does not allow for such a procedure. It is extremely unfortunate that the petitioner's prior guardian was dilatory in paying bills regarding her care; however, that delay does not overcome the statute's requirement. Thus, the county agency's denial for April and May 2016, was correct here.

Although the petitioner's guardian and representative correctly note that the accumulation of assets and nonpayment of debts was to no fault of the petitioner or nursing home, it is the long-standing policy of the Division of Hearings & Appeals that the Department's administrative law judges (ALJs) do not possess equitable powers. See *Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp 540, 545 (E.D. Wis. 1977). I can find no legal authority, which would allow me to make an exception whereby petitioner would be eligible for Institutional MA in April or May 2016. Accordingly, I must find that the agency correctly determined the petitioner ineligible for Institutional MA in April and May 2016, due to available assets exceeding the Institutional MA eligibility limit.

CONCLUSIONS OF LAW

Pursuant to the petitioner's May, 2016, MA application, the county agency correctly denied Institutional MA certification for April and May 2016, due to excess assets.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 22nd day of September, 2016

\s _____
Kristin P. Fredrick
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 22, 2016.

Dane Cty. Dept. of Human Services
Division of Health Care Access and Accountability